

CHARING CROSS ASSOCIATES

IBLA 84-411

Decided October 15, 1984

Appeal from decision of the Boise District Office, Bureau of Land Management, Boise, Idaho, rejecting right-of-way application I-20607, for an access road across public lands.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Rights-of-Way -- Rights-of-Way: Applications -- Rights-of-Way: Federal Land Policy and Management Act of 1976

Under the Federal Land Policy and Management Act of 1976, BLM has the discretion to grant or deny a road right-of-way across public lands, and its decision will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest. Therefore, when appellant proposes to build a road across BLM lands to provide alternate access to its ranch, but fails to introduce evidence to counter BLM findings that the site is unsuitable for road construction and the area would probably suffer extensive environmental damage from increased offroad vehicle traffic use, the Board will affirm the BLM decision.

APPEARANCES: Doug Porter, Manager, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Charing Cross Associates (Charing Cross), appeals the decision of the Boise District Office, Bureau of Land Management (BLM), rejecting its right-of-way application, I-20607 for a road across public lands in T. 4 N., R. 2 E., Boise Meridian, Idaho, sec. 14, N 1/2 NW 1/4.

Charing Cross applied for a right-of-way for a 40-foot-wide road, approximately 2,700 feet long, crossing public land. The proposed road would be built along the south slope of Dry Creek. The road would be used year-round to facilitate access to the Charing Cross ranching operation, connecting the ranch with Bogas Basin Road. In its application, Charing Cross stated that the right-of-way was necessary because there was "no reasonable alternate route." The road was to be built by a licensed general contractor under the direction of a civil engineer, and at no cost to the Government.

The application for the right-of-way was filed pursuant to section 501(a) of the Federal Land Policy and Management Act of 1976, codified at 43 U.S.C. § 1761 (1982), which provides:

(a) The Secretary, with respect to the public lands and, the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for --

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(6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System; or

(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.

(b)(1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.

BLM rejected the right-of-way application because it would not be in the "best interest of the public or the resources to permit construction of a road." BLM concluded:

1. The soils are considered unsuitable for road construction because of slope, hazard of seepage, low strength, unstable cutbanks, and shrinkswell potential; and

2. If the road is constructed, it is feared that in spite of efforts to control it, off-road vehicle activity will significantly and negatively impact soil erosion, watershed, and the riparian zone located along Dry Creek.

Under section 501 of FLPMA, approval of a right-of-way by the Secretary is a wholly discretionary matter. Anita Robinson, 71 IBLA 380 (1983). William A. Sigman, 66 IBLA 53 (1982). A BLM decision rejecting a right-of-way will ordinarily be affirmed by the Board when the record shows the decision to be based on a reasoned analysis of the factors involved made with due regard for the public interest. Anita Robinson, *supra*.

The BLM decision was based on reports submitted to it by a team of field examiners; namely, a wildlife biologist, a soil scientist, a recreation

planner, a realty specialist, and the Cascade area manager. One of the field examiners noted that access to the ranch headquarters presently exists from the west by way of a prescriptive easement asserted by the applicant. However, "because of threats from a private landowner and a reluctance to cause problems, the applicant felt that an alternate access route would be wise." In addition, the field report notes that the route across public land is one of "two or three available to the applicant."

A common concern of the field examiners was the adverse environmental impact that would result from off-road vehicles (ORV). The BLM area wildlife biologist stated:

These areas [riparian lands] also attract heavy use by the ORV public. Previous experience indicates that motorcyclists enjoy riding through riparian areas and up creek bottoms. The cost to wildlife habitat from the construction of a road along the south slope of Dry Creek would be extensive. It would allow access to a large section of the Creek that at present has excellent habitat for local wildlife populations.

Erosion that may occur from road construction and from ORV use on slopes would damage the fisheries of the stream. ORV use in the stream bottom could severely damage present fish habitat in such a small stream.

The area recreation planner made similar points and added: "I don't think it would be long before the discovery would be made that by taking the proposed road down and crossing the creek, one could connect with a jeep trail originating from Cartwright Road. This could conceivably become a popular loop route for cycles." In addition, one of the field examiners stated that "a standard fence and gate across the proposed road would not sufficiently deter many ORV enthusiasts."

In its appeal, Charing Cross argued that contrary to BLM's first point, the proposed road could be constructed without adverse effects. Charing Cross states its conclusion is based on information from the Ada County highway engineer. Appellant expressed concern as to BLM's second point but stated that proper fencing would eliminate the ORV activity.

We find BLM has properly considered the public interest and has made a reasoned analysis of the factors involved. Appellant has failed to produce any evidence to counter BLM's findings.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris Franklin D. Arness
Administrative Judge

Administrative Judge

